



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN-99-262-50406

Office: Nebraska Service Center

Date:

DEC 8 2000

IN RE: Petitioner:

Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data entered to
prevent clearly unauthorized
disclosure of personal privacy

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a senior pastor. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on September 16, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from September 16, 1997 to September 16, 1999.

In a letter dated August 27, 1999, the petitioner stated that the beneficiary:

entered the USA to pursue his advanced degree as an F-1 student in [REDACTED] Evangelical Seminary in Los Angeles, California in September 1996. He received his Master Degree of Divinity in 1998 and then continuously pursued his Doctor degree of Ministry in the same seminary until present.

The petitioner submitted a photocopy of a certificate of ordination awarded to the beneficiary on August 9, 1981 by the Penang Baptist Church. The petitioner also submitted photocopies of diplomas awarded to the beneficiary: one from the China Evangelical Seminary on June 26, 1988 and one from Logos Evangelical Seminary on June 20, 1998. In addition, the petitioner submitted a photocopy of the beneficiary's passport which was issued on March 20, 1993. The beneficiary's profession is listed as "teacher" on his passport.

On February 16, 2000, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner submitted a letter from the vice president of Logos Evangelical Seminary who indicated that the beneficiary "has been a student pursuing advanced theological education at our seminary since 1996."

On appeal, counsel submits a letter, dated May 8, 1992, which was signed by the Acting Assistant Commissioner, Adjudications (Lawrence J. Weinig). In this letter, Mr. Weinig stated that a priest may be considered to be continuing his vocation if he engages in continuous study, provided he continues to perform the

duties of a minister. Counsel argues that the beneficiary's studies at Logos Evangelical Seminary (including his "Field Education" during these studies) should be considered qualifying work experience.

Counsel's argument is unpersuasive. In Matter of Z-, 5 I&N Dec. 700 (Comm. 1954), the Commissioner held that continued study by an ordained member of the clergy was not interruptive of his or her continuous practice of a religious vocation. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The beneficiary in this case has never been engaged in a religious vocation as defined in this proceeding. Further, the petitioner did not provide any description of what was required of the beneficiary prior to his receipt of a certificate of ordination in 1981. All of the beneficiary's studies at seminaries were completed subsequent to the issuance of this certificate and it therefore appears that an advanced theological education was not required. The simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). Moreover, as was previously stated, the beneficiary's passport, issued in 1993, named his profession as "teacher." Consequently, it has not been established that the beneficiary is an ordained member of the clergy. Accordingly, any period of time spent studying at Logos Evangelical Seminary does not constitute continuous work experience in a religious occupation.

The letter signed by Mr. Weinig is not relevant to the instant petition. That letter addressed the issue of carrying on a vocation. As was previously discussed, the beneficiary has not been engaged in the pursuit of a vocation. Counsel also refers to two unpublished administrative decisions of this Service regarding appeals of special immigrant religious worker cases to support his appellate statement. While it has not been shown that the facts of the cases are similar, it must be noted that the unpublished administrative decisions relied on by counsel do not have binding precedential value. See 8 C.F.R. 103.3(c).

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from September 16, 1997 to September 16, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.